



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-&B-B-D, INC.

DATE: JAN. 12, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an importer and wholesaler of beauty products, seeks to employ the Beneficiary as a systems analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center initially approved the petition. The Director subsequently issued a notice of intent to revoke (NOIR), however, and following a response from the Petitioner revoked the approval on two grounds: (1) the Petitioner did not establish that the Beneficiary had the requisite education to be eligible for advanced degree professional classification, and (2) the Petitioner did not establish that the Beneficiary had the requisite experience to meet the requirements of the labor certification. The Director stated that the Beneficiary had submitted false evidence of his education and experience, and found that this action constituted fraud or willful misrepresentation of a material fact. The Petitioner filed motions to reopen and reconsider, which the Director dismissed.

On appeal the Petitioner asserts that no false evidence was submitted by the Beneficiary, that the finding of fraud or willful misrepresentation of a material fact was unwarranted, and that the Beneficiary had the requisite education and experience, as claimed on the labor certification, to qualify for the proffered position and for classification as an advanced degree professional.

Upon *de novo* review, we will sustain the appeal.

To be eligible for the requested classification of advanced degree professional, a beneficiary must possess either a master's degree or foreign equivalent degree, or a bachelor's degree or foreign equivalent degree followed by five years of experience in the specialty. *See* 8 C.F.R. § 205.5(k)(3)(i). The beneficiary must also meet all of the educational, training, experience, and other requirements of

the offered position, as stated on the labor certification, by the priority date of the petition.¹ See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977).

In this case the labor certification requires a master's degree in MIS, computer science, or a related field of study, and two years of experience as a systems analyst. The Beneficiary claimed on the labor certification to have a master's degree in management information systems from [REDACTED] in [REDACTED] South Korea, completed in 2004, and four and a half years of qualifying experience as a systems analyst with [REDACTED] in [REDACTED] South Korea, during the years 2002-2006. Documentation of this education and experience was submitted as initial evidence with the petition.

In the NOIR and the revocation decision the Director stated that the Beneficiary had submitted false evidence of his education and experience, and discussed conflicting evidence in prior filings relating to the Beneficiary's employment history. The Director did not cite any specific examples of false evidence regarding the Beneficiary's education. After the Petitioner appealed we issued a notice of intent to dismiss (NOID) citing evidence we had acquired which appeared to indicate that the Beneficiary had not earned the educational degree he claimed from [REDACTED] as well as unresolved conflicts concerning the identity of the employer with which the Beneficiary claimed to have gained his qualifying employment and the time frame of that employment.

Based on the Petitioner's response to our NOID, which includes additional documentation related to the Beneficiary's education and experience, as well as our own further investigation, we conclude that the evidence of record is reliable and establishes that the Beneficiary has the requisite education and experience to meet the terms of the labor certification and to qualify for classification as an advanced degree professional. Accordingly, we withdraw the Director's revocation decision, including the finding of fraud or willful misrepresentation of a material fact.

ORDER: The appeal is sustained.

Cite as *Matter of S-&B-B-D-, Inc.*, ID# 122782 (AAO Jan. 12, 2018)

¹ The "priority date" of the petition is the date the underlying labor certification was filed with the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in this case is February 28, 2012.